

1 DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Western Division of Survey and Certification
San Francisco Regional Office
90 7th Street, Suite 5-300 (5W)
San Francisco, CA 94103-6707



Refer to: WDSC-YP

**[Receipt Of This Notice Is Presumed To Be September 30, 2019- Date Notice Faxed]
Important Notice - Please Read Carefully**

**Faxed to: (415) 759-2374 and
Emailed to: Maggie.rykowski@sfdph.org**

September 30, 2019

CMS Certification Number (CCN): 55-5020

CMP Case Number: 2019-09-LTC-208

Margaret Rykowski, Administrator
Laguna Honda Hospital & Rehabilitation Center DP SNF
375 Laguna Honda Blvd.
San Francisco, CA 94116

Dear Ms. Rykowski:

The Civil Money Penalty Imposed on the Basis of the July 12, 2019 Complaint Survey Is Now Due and Payable on October 15, 2019.

As you were previously informed, a complaint survey completed on July 12, 2019 by the California Department of Public Health (State Survey Agency) found that your facility, Laguna Honda Hospital & Rehabilitation Center DP SNF, was not in substantial compliance with the applicable Federal requirements for nursing homes participating in the Medicare and/or Medicaid Programs under Titles XVIII and XIX of the Social Security Act. See 42 C.F.R. Part 483. Indeed, these survey findings documented that the cited deficiencies posed immediate jeopardy to residents' health and safety of which the facility was notified on July 11, 2019 at 3:40 pm. The immediate jeopardy was determined to be subsequently abated on July 12, 2019 at 6:36 pm. Furthermore, the July 12, 2019 survey also documented that your facility provided "substandard quality of care" as that term is defined in 42 C.F.R. §488.301.

Accordingly, on September 3, 2019, the Centers for Medicare and Medicaid Services (CMS) notified you that certain remedies were being imposed against your facility. Specifically, we informed you that, as a result of the certification/finding of noncompliance based on our determination that your facility was not in substantial compliance with the participation requirements at 42 C.F.R. Part 483 as documented during the survey completed on July 12, 2019, we were imposing against your facility a denial of payment for new admissions, pursuant to 42 C.F.R. § 488.417(a), effective September 18, 2019.

In addition, you were notified in this same September 3, 2019 letter that a civil money penalty was being imposed, pursuant to 42 C.F.R. § 488.30, in the amount of \$6,740.00 per day beginning on February 6, 2019 through July 11, 2019 and totaled \$1,051,440.00 for the 156 days that immediate jeopardy to residents' health and safety existed; and continuing at the reduced amount of \$1,285.00 per day effective July 12, 2019 and continuing each day thereafter until further notice from CMS.

You were advised that both remedies would remain in effect until this office either terminated your Medicare provider agreement, or determined that your facility had come into substantial compliance with the applicable Federal health and safety requirements. You were further informed in our September 3, 2019 notice that CMS would terminate your Medicare provider agreement no later than **January 12, 2020**-- six (6) months from the last day of the July 12, 2019 survey documenting your failure to be in substantial compliance -- if substantial compliance with the Medicare/Medicaid participation requirements was not promptly achieved and maintained. See 42 U.S.C. § 1395i-3(h)(2)(C) and 42 C.F.R. § 488.412(d); see also 42 U.S.C. § 1395cc(b)(2); 42 C.F.R. §§ 488.56(b)(1) & 488.53(a)(1) and (3).

First Follow-Up Survey Completed on September 6, 2019

In response to your allegations that you had corrected all deficiencies identified during the July 12, 2019 survey, and were otherwise in substantial compliance with the nursing home requirements at 42 C.F.R. Part 483, the State Survey Agency conducted a follow-up survey at your facility. This survey, which was completed on September 6, 2019, again documented that, notwithstanding your representation of compliance, Laguna Honda Hospital & Rehabilitation Center DP SNF was not in substantial compliance with participating requirements at 42 C.F.R. Part 483. The September 6, 2019 survey findings were listed on a Statement of Deficiencies (Form CMS-2567) that was forwarded to you after the survey.

CMS's Approval of Certification/Finding of Noncompliance Based on the September 6, 2019 Survey

Having reviewed the September 6, 2019 survey findings and the State Survey Agency's recommendations, this office has concluded that we concur with the survey findings documented during the survey completed on September 6, 2019 (and listed on the above referenced CMS-2567). Accordingly, we have approved a further certification/finding of noncompliance based upon our conclusion that Laguna Honda Hospital & Rehabilitation Center DP SNF was **not in substantial compliance** with nursing home participation requirements at 42 C.F.R. Part 483 as documented by the survey completed on September 6, 2019 (and listed on that survey's CMS-2567, the contents of which are incorporated herein by reference).

On the basis of this certification/finding of noncompliance (i.e., the certification/finding of noncompliance relating to the survey completed on September 6, 2019), we have determined that the following remedies be imposed and/continued:

Denial of payment for new admissions [42 C.F.R. § 488.417(a)]

This remedy was previously imposed, effective September 18, 2019 based on our certification/finding of noncompliance resulting from the survey completed on July 12, 2019. (See our September 3, 2019 notice.) Accordingly, by this letter, you are hereby notified that, based on the certification/finding of noncompliance resulting from the survey completed on September 6, 2019, the denial of payment for

new admissions went into effect on September 18, 2019 and will remain in effect until this office either terminates your Medicare provider agreement or determines that your facility has come into substantial compliance with the applicable Federal health and safety requirements.

Civil money penalty [42 C.F.R. § 488.430]

This remedy was previously imposed based on our certification/finding of noncompliance resulting from the survey completed on July 12, 2019 in the amount of \$6,740.00 per day beginning on February 6, 2019 through July 11, 2019 and totaled \$1,051,440.00 for the 156 days that immediate jeopardy to residents' health and safety existed; and continuing at the reduced amount of \$1,285.00 per day effective July 12, 2019 and continuing each day thereafter (as noticed in our letter dated September 3, 2019).

You are hereby notified that, based on the certification/finding of noncompliance resulting from the survey completed on September 6, 2019, the civil money penalty continued in effect in the reduced amount of \$110.00 per day on (and subsequent to) September 6, 2019 and each day thereafter until this office either terminates your Medicare provider agreement, or determines that your facility has come into substantial compliance with the applicable Federal health and safety requirements.

Furthermore (as discussed above and noticed in our September 3, 2019 letter), CMS will terminate your Medicare provider agreement if substantial compliance with Medicare participation requirements is not promptly achieved and maintained. You are reminded again that Congress has mandated that under no circumstances will such termination be effective later than six months from the last day of the survey documenting your failure to be in substantial compliance. See, e.g., 42 C.F.R. § 488.412(d). **In this case, since the survey in question was completed on July 12, 2019, under no circumstances will termination of Laguna Honda Hospital & Rehabilitation Center DP SNF be effective later than January 12, 2020.**

Additional Documentation Supporting Certification/Finding of Noncompliance

It is emphasized that even though the certification/finding of noncompliance (and thus the enforcement action noticed in this letter) is based on the findings of the survey as set forth in the Form CMS-2567 referenced herein, CMS may have additional evidence and information (including, but not limited to State licensure information, correspondence, provider records, or verified complaints) relating to the deficiencies identified during the September 6, 2019 survey that may be presented at the time of (or before) an administrative hearing challenging CMS's certification/finding of noncompliance. This corroborating evidence/information may be used at a hearing to resolve possible conflicts of factual information and to otherwise support CMS's adverse findings. Accordingly, nothing in this notice should be viewed as limiting or constraining CMS's right to present this additional evidence/information at an administrative hearing. (See State Operations Manual Section 3026F.)

Appeal Rights for the Survey Completed on September 6, 2019

If you disagree with our certification/finding of noncompliance that is based upon our determination that Laguna Honda Hospital & Rehabilitation Center DP SNF was not in substantial compliance with controlling Medicare participation requirements at 42 C.F.R. Part 483 as documented during the survey completed on September 6, 2019, you or your legal representative may request a hearing before an administrative law judge of the Department of Health and Human Services' Departmental Appeals Board since this certification/finding of noncompliance has led to the actual imposition of an enforcement remedy specified at 42 C.F.R. § 488.406. You may appeal the certification/finding of

noncompliance which led to an enforcement action, but you cannot appeal the enforcement remedy itself. See 42 C.F.R. § 488.408(g). Procedures governing this process are set out in 42 C.F.R. Part 498, Subpart D. A request for a hearing should be filed **electronically** no later **than sixty (60) calendar days** from the date of receipt of this notice. (We remind you that, as indicated above, since this notice is being sent to you by facsimile, your appeal must be filed no later than sixty (60) days from the date indicated on this notice.) See 42 C.F.R. 498.40(a)(2).

You can file your appeal electronically at the Departmental Appeals Board Electronic Filing System Web site (DAB E-File) at <https://dab.efile.hhs.gov>. To file a new appeal using DAB E-File, you first need to register a new account by: (1) clicking **Register** on the DAB E-File home page; (2) entering the information requested on the "Register New Account" form; and (3) clicking **Register Account** at the bottom of the form. If you have more than one representative, each representative must register separately to use DAB E-File on your behalf.

The e-mail address and password provided during registration must be entered on the login screen at https://dab.efile.hhs.gov/user_sessions/new to access DAB E-File. A registered user's access to DAB E-File is restricted to the appeals for which he or she is a party or authorized representative. Once registered, you may file your appeal by:

- Clicking the **File New Appeal** link on the Manage Existing Appeals screen, then clicking Civil Remedies Division on the File New Appeal screen.

And,

- Entering and uploading the requested information and documents on the "File New Appeal-Civil Remedies Division" form.

At minimum, the Civil Remedies Division (CRD) requires a party to file a signed request for hearing and the underlying notice letter from CMS that sets forth the action taken and the party's appeal rights. All documents must be submitted in Portable Document Format ("PDF"). Any document, including a request for hearing, will be deemed to have been filed on a given day, if it is uploaded to DAB E-File on or before 11:59 p.m. ET of that day. A party that files a request for hearing via DAB E-File will be deemed to have consented to accept electronic service of appeal-related documents that CMS files, or CRD issues on behalf of the Administrative Law Judge, via DAB E-File. Correspondingly, CMS will also be deemed to have consented to electronic service. More detailed instructions on DAB E-File for CRD cases can be found by clicking the CRD E-File Procedures link on the File New Appeal Screen for CRD appeals.

If you do not have the ability to file your appeal electronically, you may file it in writing, but must provide an explanation as to why you cannot file submissions electronically and request a waiver from e-filing in the mailed copy of your request for a hearing. Written request for appeals must also be filed no later than sixty (60) calendar days from the date you receive this notice, and must be submitted to the following address:

Department of Health and Human Services
Departmental Appeals Board, MS 6132
Civil Remedies Division
330 Independence Ave, SW
Cohen Building, Room G-644
Washington, D.C. 20201

If you choose to file your appeal to the Departmental Appeals Board, please also email a courtesy copy of your hearing request (excluding exhibits and attachments) to the San Francisco Regional Office using the following e-mail address at: ROSFEnforcements@cms.hhs.gov

It is emphasized that a request for a hearing must identify the specific issues, and the findings of fact and conclusions of law with which you disagree. It must also specify the basis for contending that the findings and conclusions are incorrect. See 42 C.F.R. § 498.40(b). If a hearing request does not fully comport with the timing and specificity requirements of 42 C.F.R. § 498.40, CMS will promptly move, as appropriate, for summary judgment on certain issues and/or dismissal of your entire filing.

If your hearing request is not dismissed you will have an opportunity to present evidence and further argument at an in-person hearing or on the record, where you may be represented by counsel at your own expense. **[Please note the above-mentioned right to request an administrative hearing is separate and distinct from your right to request a hearing as set forth in CMS's notice to you dated September 3, 2019].**

Waiver Option With Regard to Certification/Finding of Noncompliance Based on the First Follow-Up Survey Completed on September 6, 2019.

In lieu of requesting a hearing to challenge the certification/finding of noncompliance noticed herein (that is, the certification/finding of noncompliance based on the determination that Laguna Honda Hospital & Rehabilitation Center DP SNF was not in substantial compliance with controlling Medicare participation requirements at 42 C.F.R. Part 483 as documented during the survey completed on September 6, 2019), you may choose to waive your right to such a hearing. **A decision to exercise this waiver option must be made in writing on your company letterhead within sixty (60) calendar days from the date of this notice (which is being sent to you *via* facsimile). See 42 C.F.R. 488.436. Please note that your CMP waiver must be electronically submitted directly to our San Francisco Regional Office using the following e-mail address at:**

ROSFEnforcements@cms.hhs.gov

Such a waiver of your hearing rights would constitute an acceptance of this office's determination that your facility was not in substantial compliance as documented during the survey completed on September 6, 2019; and an acceptance of all enforcement remedies under 42 C.F.R. § 488.406 resulting from the certification/finding of noncompliance not being challenged (i.e., the certification/finding based on the September 6, 2019 survey). By your waiver, therefore, you would accept all of the enforcement remedies that are being imposed by this office as a result of our determination that your facility was not in substantial compliance with 42 C.F.R. Part 483 participation requirements as documented during the survey completed on September 6, 2019. The total amount of the affected civil money penalty, however, would be reduced by thirty-five percent (35%) in accordance with 42 C.F.R. § 488.436(b).

Finally, you are reminded that you will be notified of the total amount due with regard to the civil money penalty being imposed herein when CMS: (1) determines that you have achieved substantial compliance with the applicable participation requirements; or (2) terminates your facility's Medicare provider agreement. However, a distinct portion of the civil money penalty could be identified at an earlier date as thereafter due and payable if (prior to CMS determining that you have achieved substantial compliance or prior to termination) a further survey documents that you continue not to be in substantial compliance and you have not timely

appealed or timely waived your right to appeal the certification/finding of noncompliance upon which the current civil money penalty is based.

In this regard, the finding of noncompliance upon which the civil money penalty is presently founded is the determination that Laguna Honda Hospital & Rehabilitation Center DP SNF was not in substantial compliance with the participation requirements at 42 C.F.R. Part 483, as documented during the survey completed on September 6, 2019.

You will receive an appropriate notice from CMS regarding any subsequent findings of noncompliance that are relevant to the continued imposition of this civil money penalty and other remedies.

Independent Informal Dispute Resolution (Independent IDR)

Because a civil money penalty was imposed for the September 6, 2019 survey, the civil money penalty will be subject to the combined civil money penalty collection and escrow provisions and Independent IDR process set forth in 42 C.F.R. § 488.431. We are authorized pursuant to 42 C.F.R. § 488.431(b) to collect your CMP and place it in an escrow account on the earlier of the following dates: 1) the date on which the Independent IDR process is complete or 2) 90 days from the date of this notice. During the Independent IDR process a facility may dispute the factual basis of the cited deficiencies for which it requested Independent IDR. You may also contest scope and severity assessments for deficiencies which resulted in a finding of substandard quality of care (SQC) or immediate jeopardy.

You are required to send your written request for an Independent IDR, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies (or why you are disputing the scope and severity assessments of deficiencies which been found to constitute SQC or immediate jeopardy) to:

Diana Marana
District Manager for the San Francisco District Office
California Department of Public Health
150 North Hill Drive, Suite 22
Brisbane, CA 94005
Telephone: (415) 330-6353

Please include a copy of this CMS notice with your written request for an Independent IDR.

This request must be sent within 10 calendar days of receipt of this CMS notice. A request for an Independent IDR process will not delay the effective date of any enforcement remedy imposed on your facility, and it will not delay our collection of your facility's CMP for more than ninety (90) days.

Please note further that an incomplete IDR or Independent IDR process will not delay any deadline listed above under "Appeal Rights" for requesting a hearing, or under "Details Regarding the Civil Money Penalty" for requesting waiver of hearing rights.

Waiver of Right to Hearing With Regard to Certification/Finding of Noncompliance Based on the Survey Completed on July 12, 2019

In our September 3, 2019 notice, we advised your facility of its right to request an administrative hearing (i.e., to appeal) to challenge our certification/finding of noncompliance based on our

determination that Laguna Honda Hospital & Rehabilitation Center DP SNF was not in substantial compliance with controlling Medicare participation requirements at 42 C.F.R. Part 483 as documented during the survey completed on July 12, 2019; or to waive its right to such a hearing and, in accordance with 42 C.F.R. 488.436(b), to reduce the amount of the civil money penalty by thirty-five percent (35%). In response to our September 3, 2019 notice, Laguna Honda Hospital & Rehabilitation Center DP SNF timely submitted by letter dated September 20, 2019, and which was emailed to CMS on September 23, 2019, a request for a waiver of its right to challenge the certification/finding of noncompliance based on the survey completed on July 12, 2019.

Since you have exercised your option to waive your right to an administrative hearing under 42 C.F.R. Part 483, you are accepting this office's determination that your facility was not in substantial compliance as documented during the survey completed on July 12, 2019 (as set forth in the Statement of Deficiencies [Form CMS-2567] for that survey); and you are accepting all of the enforcement remedies under 42 C.F.R. 488.406 imposed in our notice of September 3, 2019 resulting from the certification/finding of noncompliance not being challenged (i.e., the finding/certification premised upon the above-referenced survey). By your waiver, therefore, you have accepted all of the enforcement remedies that were imposed by this office as a result of our determination that your facility was not in substantial compliance with Part 483 participation requirements as documented during the survey completed on July 12, 2019.

The civil money penalty based on the findings of the complaint survey completed on July 12, 2019 was in effect for two hundred twelve (212) days beginning on February 6, 2019 through September 5, 2019 and totaled \$1,123,400.00. However, we have reduced the total amount of the civil money penalty of \$1,123,400.00 by thirty-five percent (35%) to **\$730,210.00** in accordance with 42 C.F.R. §488.436.

Accordingly, the total amount of the civil money penalty in the reduced amount of **\$730,210.00 (for the CMP accrual period of February 6, 2019 through September 5, 2019) is now due and payable on October 15, 2019.** See 42 C.F.R. 488.442(b)(3).

Payment of CMP

To pay this penalty, you may select one of the following two options: (1) Mail a check to CMS; or (2) Electronic transfer of funds.

To ensure proper crediting of your payment, please include your **CMS Certification Number 55-5020** and the **CMP case number # 2019-09-LTC-208**, on your certified check. Make the certified check payable to the Centers for Medicare & Medicaid Services and send your certified check to:

Centers for Medicare and Medicaid Services
Division of Accounting Operations
Mail Stop C3-11-03
P.O. Box 7520
Baltimore, Maryland 21207

If you are using a delivery service, such as Federal Express, use the following address only:

Centers for Medicare & Medicaid Services
Division of Accounting Operations
Mail Stop C3-11-03

7500 Security Boulevard
Baltimore, MD 21244

Do not send your original CMP payment check to this Regional Office. Otherwise, your payment will be considered late and offset may be initiated and/or interest may be imposed. **Please send only a copy of your payment check to this Regional Office via fax to the attention of Yvonne Pon at fax # (443) 380-6332 or you may email to Yvonne.pon@cms.hhs.gov.**

To pay by electronic transfer of funds to CMS:

Please provide the information below to your financial institution. **Make sure the CMP # and CCN under remarks is entered in order to assure proper crediting of your payment.**

Subtype/Type Code:	10 00
Amount:	\$730,210.00
Sending Bank Routing Number:	<i>(your bank's routing number)</i>
ABA Number of Receiving Institution:	021 030 004
Receiver Name:	Treasury NYC
Receiving Institution Name:	Federal Reserve Bank of New York
Receiving Institution Address:	33 Liberty Street, New York, NY 10045
Beneficiary Account Number:	875050080000
Beneficiary Name:	Centers for Medicare & Medicaid Services (CMS)
Beneficiary Physical Address:	7500 Security Blvd., Baltimore, MD 21244
CMS Tax ID Number:	52-0883104
Federal Reserve Assistance Number:	(202) 874-6894
Remarks:	CMP # 2019-09-LTC-208 for CCN 55-5020

If your payment is sent via electronic transfer, please fax a copy of the transaction confirmation to this Regional Office to the attention of Yvonne Pon at fax # (443) 380-6332.

If payment through a certified check or electronic transfer in the full amount of **\$730,210.00** is not received by **October 15, 2019** (the due date of the penalty), the civil money penalty plus all interest that has accrued after the due date of **October 15, 2019** will be deducted in accordance with federal regulations, from sums owing to you by the Medicare and/or Medicaid programs. See 42 C.F.R. §488.442(c) and (d). For your information, the rate of interest is 10.625%. If deductions are taken, you will receive no further notice from this office.

If you have any questions, you may contact Yvonne Pon of my staff at (415) 744-3710.

Sincerely,

Paula Perse for

Steven D. Chickering
Associate Regional Administrator
Western Division of Survey and Certification

cc: State Agency
State Medicaid Agency